**COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING**

**{Chapter VIII, Rule 32(2)(b)}**

Description of the Case.

CRIMINAL APPEAL No. 245 of 2001
Old No. 1694/1985

Dewan Singh and others

**... Appellants**

Versus

State

**... Opposite Party**

Sri Jitendra Chaudhary, for appellants No. 1 & 4.
Km. Gomti Devi, Ld. Amicus Curiae for appellant no.2 & 3.
Sri Amit Bhatt, learned Addl. GA and Sri M.A. Khan, Ld. brief holder for the State.

Approved for reporting.
~~Not approved for reporting~~.

Date: June 08, 2007

**(Dharam Veer, J.)**

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**CRIMINAL APPEAL No. 245 of 2001**

**Old No. 1694/1985**

1. Dewan Singh S/o Bakar Singh
2. Ratan Singh S/o Bhag Singh R/o Gram Motipur No.1 P.S. Rudrapur, District Nainital at present District U.S. Nagar
3. Kashmir Singh S/o Inder Singh.
4. Balbir Singh S/o Pathana Singh. R/o Karailpuri P.S. Ramnagar, District Nainital.

.....Appellants

**Versus**

The State ...Opposite Party

**Dated: June 08, 2007**

**Sri Jitendra Chaudhary, for appellants No. 1 & 4.**
**Km. Gomti Devi, Ld. Amicus Curiae for appellant no.2& 3.**
**Sri Amit Bhatt, learned Addl. GA and Sri M.A. Khan, Ld. brief holder for the State.**

**HON. DHARAM VEER, J.**

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 21.06.1985 passed by Special Judge, (Additional Sessions Judge) Nainital, in Session Trial No. 70/1983, State Vs. Dewan Singh and others, whereby, the learned Special Judge (Additional Sessions Judge) Nainital has convicted the appellant Dewan Singh under Section 307 I.P.C. and 323/34 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*) and appellants Ratan Singh, Kashmir Singh and Balbir Singh have been convicted under Section 307/34 I.P.C. and 323/34 I.P.C. The appellant Dewan Singh was awarded sentence for a period of 4 years R.I. and to pay a fine of Rs.2,000/- under Section 307 I.P.C. and also to undergo R.I. for a period of one year and to pay a fine of Rs.500/- under Section 323/34 I.P.C. and in case of default of fine under the aforesaid Sections, it was directed that the appellant Dewan Singh would undergo R.I. for a further period of six months and three months respectively. The appellants Ratan Singh, Kashmir Singh, and Balbir Singh were directed to undergo R.I. for a period of 4 years and to pay a fine of Rs. 2,000/- under

Section 307/34 I.P.C. and also to undergo R.I. for a period of one year and to pay a fine of Rs. 500/- under Section 323/34 I.P.C. In case of default of payment of fine under the aforesaid sections, each of the appellants were directed to undergo R.I. for a further period of six months and three months respectively. The substantive sentences were directed to run concurrently. It was also directed that out of the fine recovered from the appellants, an amount of Rs.1,000/- shall be paid to injured Inder Singh and Rs.500/- to injured Kehar Singh by way of compensation u/s 357 Cr.P.C.

2. In brief, the prosecution story is that on 30.07.1982 at about 12.00 noon, Inder Singh along with Kehar Singh had gone to plough his land at Village Madanapur. The said land was mortgaged by Dewan Singh in favour of Inder Singh. When Inder Singh had started to plough the land at 12:00 P.M., then appellant Ratan Singh armed with pistol (tamancha), appellant Ratan Singh armed with sword and appellants Kashmir Singh and Balbir Singh, each armed with lathis, had entered into the field. As soon as they arrived into the field, they told, “how they dare to plough the land”. In the meantime, the appellants started to beat Kehar Singh and Inder Singh. When Kehar Singh had asked them why they were doing so, then appellant Dewan Singh had fired by a (tamancha) pistol on Kehar Singh, which hit at the thigh of Kehar Singh. After receiving the injury of fire, Kehar Singh fell down on the land. Then Dalip Singh son of Inder Singh along with the help of his brother Variyam Singh and Awtar Singh and other people of the village had saved Inder Singh, and Kehar Singh from the appellants. After that the appellants ran away towards their village Motipur. The litigation was also going on about the disputed land between Inder Singh and Dewan Singh. For the above said incident, Dalip Singh, son of injured Inder Singh had lodged the F.I.R. in Police Chowki, Dineshpur

Police Station, Rudrapur on 30.07.1982 at 1:15 P.M. i.e. Ex.Ka.5. On the basis of this F.I.R. Ex.Ka.5, the Clerk Constable, Mohan Lal prepared the chick report i.e.Ex.Ka.6. The distance of the Police Chowki from the place of occurrence as shown in the chick F.I.R. is 3 kms. At the same time, the entry was made in the G.D. i.e. Ex.Ka.7. The injured Inder Singh, was examined by Superintendent Dr. O.S. Sharma, in J.L. Nehru Hospital, Rudrapur, at 4:15 P.M. on 30.07.1982, the medical report was prepared by Superintendent Dr. O.S. Sharma, i.e. Ex.Ka.1, the injured Kehar Singh, was also medially examined by Superintendent Dr. O.S. Sharma at 4.30 P.M. on the same day i.e. 30.07.1982. The injury report of Kehar Singh is Ex.Ka.2. The supplementary report of injured Inder Singh was also prepared by Superintendent Dr. O.S. Sharma in J.L. Nehru Hospital, Rudrapur, that is Ex.Ka.3 and the supplementary report of Kehar Singh was also prepared by Superintendent Dr. O.S. Sharma, in J.L. Nehru Hospital, Rudrapur i.e. Ex.Ka.4.

3. The investigation of the case was entrusted to Investigating Officer, Prem Singh, PW.8 Sub-Inspector. During the investigation, he has recorded the statements of the witnesses and has taken in his possession that blood stained under-wear of Kehar Singh and the Fard was prepared by him that is Ex.Ka.9. The site plan was prepared of the place of occurrence, that is Ex.Ka.10. From the spot, he has taken the blood stained earth and the plain earth and prepared a Fard that is Ex.Ka.11. The plain earth and blood stained earth were sealed in two separate boxes. After completing the investigation, he has submitted the charge sheet against the appellants Dewan Singh, Ratan Singh, Kashmir Singh, on 15.09.1982, the charge sheet is Ex.Ka.12. On 7.11.1982, he has submitted the charge sheet against the appellant Balbir Singh, that is

Ex.Ka. 13. Thereafter, the Chief Judicial Magistrate, Nainital, has committed the case to the Court of Sessions on 23.03.1983 after complying with the provisions of Section 207 Cr.P.C.

4. The Additional Sessions Judge, (Special Judge, Nainital) has framed the charge against the appellants Ratan Singh, Kashmir Singh, and Balbir Singh under Section 307/34 I.P.C. and under Section 325/34 I.P.C. on 6.04.1984. The charge was read over and explained to the appellants Ratan Singh, Kashmir Singh and Balbir Singh who pleaded not guilty and claimed to be tried. Against the appellant Dewan Singh, the charge under Sections 307 IPC and 325/34 I.P.C. was framed by Additional Sessions Judge, (Special Judge) Nainital on 6.04.1984. The charge was read over and explained to the appellant Dewan Singh, who pleaded not guilty and claimed to be tried.

5. The prosecution, in order to prove its case, examined P.W.1 Dr. O.S. Sharma, P.W.2 Dalip Singh who is the informant, P.W.3 Inder Singh, the injured witness, P.W.4 Kehar Singh, the injured witness, P.W.5 Constable Mohan Lal, P.W.6 Nauni Ram, P.W.7 Gur Awtar Singh and P.W.8 S.I. Prem Singh, the Investigating Officer.

6. Thereafter, the statements of the appellants were recorded u/s 313 Cr.P.C., who have denied the allegations made against them.

7. After appreciating the above said evidence and hearing the counsel of the parties, the Special Judge, (Additional Sessions Judge) Nainital, has convicted the appellants Dewan Singh under Section 307 IPC and 323/34 I.P.C. and appellants Ratan Singh, Kashmir Singh and Balbir Singh have been convicted under Section 307/34 IPC and 323/34 I.P.C. The appellant Dewan Singh was awarded sentence for a period of 4 years R.I. and to

pay a fine of Rs.2,000/- under Section 307 I.P.C. and also to undergo R.I. for a period of one year and to pay a fine of Rs. 500/- under Section 323/34 I.P.C. and in case of default of fine under the aforesaid sections, the appellant Dewan Singh was directed to undergo R.I. for a further period of six months and three months respectively. The appellants Ratan Singh, Kashmir Singh, and Balbir Singh were directed to undergo R.I. for a period of 4 years and to pay a fine of Rs. 2,000/- under Section 307/34 I.P.C. and also to undergo R.I. for a period of one year and to pay a fine of Rs. 500/- under Section 323/34 I.P.C. in case of default of payment of fine under the aforesaid sections, each of the appellants were directed to undergo R.I. for a further period of six months and three months respectively. The substantive sentences were directed to run concurrently. It was also directed that out of the fine recovered from the appellants, an amount of Rs.1,000/- shall be paid to injured Inder Singh and Rs.500/- to injured Kehar Singh by way of compensation u/s 357 Cr.P.C.

8. I have heard Mr. Jitender Chaudhary, learned counsel for the appellant no. 1 and 4; Mrs. Gomti Devi, ld. Amicus Curiae, for the appellants no. 2 and 3 and Mr. Amit Bhatt, learned Addl. G.A. for the State and perused the entire evidence available on record.

9. The prosecution has examined PW1 Dr. O.S. Sharma, who has stated that on 30.07.1982 he was posted as Superintendent, J.L. Nehru Hospital, Rudrapur, District Nainital. On 30.07.1982 at about 4:15 P.M., he had examined the injuries on the body of Inder Singh, who was brought to him by Constable Rajender Kumar. He has found the following injuries on the person of Inder Singh: -

*(1) Contusion right supra scapular area and along border of scapula upper 8 cm x 2cm, red ring present.*

(2) *Contusion middle knuckle of left hand index finger 1cm x 1cm, red ring present with swelling. Both the injuries had been caused by some blunt weapon, such as, a lathi and were fresh in duration. They were kept under observation and X-ray was advised.*

Dr. O.S. Sharma has also stated that the injuries were fresh and could be caused by some hard object such as lathis-dandas, and were kept under observation.

On the same day on 30.07.1982 at 4:30 P.M., he had also examined the injured Kehar Singh, who was brought to him by Constable Rajender Kumar and he has found the following injuries on his body:

(1) *Gun shot wound with lacerated margins multiple of left hand index finger 1/3cm x 1/3cm. Depth and direction lost in deep tissues. No charring no singeing, no soot echymosis present over medial side oval shaped. Fresh oozing present.*
(2) *Gun shot wound with lacerated margins just above base of left hand little finger 1/3 cm x 1/3cm. Dept and direction lost in deep tissues. No charring, no singeing, no sot seen. Echynosis present oval shaped. Fresh oozing present.*
(3) *Multiple gun shot wounds of entry with lacerated inverted margins about 35 in number over left buttock and back of thigh upto knee in an area of 46 cm x 18cm each about 1/3cm x 1/3cm into depth and direction lost in deep tissues. No charring, no singeing no soot present. Echymosis present. Fresh oozing present. Appartently directed anteriorly.*
(4) *Multiple gun shot wounds of entrance with lacerated inverted margins about 12 in number back of left thigh in an area 30 cm x 14cm each about 1/3 cm x 1/3cm x depth and direction lost in deep tissues. No charring, no singeing or soot see. Echymosis present apparently directed anteriorly.*

He has further stated that the injuries were fresh and could be caused by firearm and were kept under observation.

10. He has prepared the injury reports of both the injured person that is Ex.Ka.1 and Ex.Ka.2. He has further stated the injuries of both the injured persons could possibly be

caused on 30.07.1982 in the noon at 12:00 P.M. He has also stated that he had also prepared the supplementary report of Inder Singh, that is Ex.Ka.3. As per the injury report, injury no.2 is on the index finger (Tarjani) and the bone of this finger was fractured. Hence, he has given the opinion that injury no.2 of Inder Singh were grievous and injury no.1 was simple. He has prepared the supplementary report of Kehar Singh after the X-ray was conducted, that supplementary report is Ex.Ka.4. According to this supplementary report the injuries of Kehar Singh were simple in nature. He took out two (Charras) pieces of shots from the body of Kehar Singh and they were handed over to police. In the cross-examination he has further stated that on the same day at 5.00 PM, he has examined appellant Dewan Singh who was brought to him by Constable Rajender Kumar and he has found the following injuries on his body:

(1) Lacerated *wound on top of scalp 3 cm x 1/3 cm, fresh bleeding present.*
(2) *Lacerated wound* 2cm posterior to wound (1) side to side 2½ cm x 1/3 x bone deep, fresh, bleeding present. Intervening tissues not cut in wound nos. (1) and (2)
(3) *Contusion lower second of left forearm 3cm x 3cm, red ring present.*
(4) *Contusion on middle of right thigh outer aspect 3cm x 2cm, red ring present.*
(5) *Contusion left calf 4cm x 4cm, red ring present.*
(6) *Contusion outer aspect of middle of left leg 2cm x 2cm, red ring present.*
(7) *Contusion outer aspect middle of right leg 3cm x 3cm, red ring present.*
(8) *Contusion lateral on right shoulder 2cm x 2cm, red ring present.*
(9) *Penetrating wound 10 cm above left elbow posteriorly 1cm x ¼ cm x depth and direction lost in deep tissues, with fresh bleeding, alleged to have been caused by a firearm, no charring, no tattooing or soot seen. Advised X-Ray.*
(10) *Penetrating wound middle of right thigh 1cm x ¼ cm x depth and direction lost in deep tissues, alleged to have been caused by a firearm, no charring, no*

*tattooing or soot seen, fresh bleeding present. Advised X-Ray.*

(11) *Contusion transverse middle of back of chest 10 cm x 2cm across midline, red ring present.*

On the same day at 5.30 PM, he has also examined Sitabai wife of Ratan Singh who was brought to him by Constable Rajender Kumar and he found the following injuries on her person :-

1. *Lacerated wound along lateral border or right eyebrow and just beyond it, 2cm x ½cm x bone deep, fresh bleeding present.*
2. *Contusion laterally middle of left thigh, 3cm x 3cm, red ring present.*
3. *Contusion on left calf lower side, 4cm x 3cm, red ring present.*

He has proved the injury reports Ex.Kha.1 and Ex.Kha.2. He has also proved the supplementary report of the appellant Dewan Singh, that is Ex.Kha.3 and he has also proved the supplementary report of the injured Sitabai that is Ex.Kha.4.

11. PW.2 is Dalip Singh, who has stated that the appellants Ratan Singh, Kashmir Singh, Balbir Singh and Dewan Singh were known to him. The incident was taken place about one and a half year before. The time was about 12 'o' clock in the noon. His father Inder Singh and his cousin brother Kehar Singh were ploughing the land for sowing the paddy crop. This land was situated in the village Madanapur and was mortgaged by appellant Dewan Singh in favour of the Inder Singh for Rs.4000/-. Appellant Dewan Singh was trying to take possession over the land forcibly and one case was also pending about this land. Kashmir Singh and rest of the three appellants along with Sitabai had come on the spot. Dewan Singh was armed with pistol (Tamancha) and Ratan Singh was armed with sword and rest of the two appellants had lathis in their hands. They asked the complainant how they had reached in the field. After that, they have started to beat Inder Singh

and Kehar Singh. Kehar Singh asked not to beat them and then Dewan Singh had fired by pistol (Tamancha) which hit the Kehar Singh on his thigh. Kehar Singh fell down. Thereafter, they made a noise. After hearing cries, the people of the village had also reached there. Then the appellants had run away from the spot. The report about the said incident was written by him that is Ex.Ka.5 and that was in his handwriting. He has lodged the F.I.R. in Police Chowki, Dineshpur. Then, Inder Singh and Kehar Singh were medically examined. He had further stated that when the appellant had beaten his father Inder Singh and Kehar Singh then, in defence he had used lathi. This witness was cross-examined at length by the defence counsel, but nothing has come out from his statement, which may create any doubt in his statement. The statement of this witness is trustworthy, reliable and believable.

12. PW.3 is Inder Singh, who is an injured witness. He has stated that he appellants Ratan Singh, Kashmir Singh, Balbir Singh and Dewan Singh were known to him. He had taken the land of Dewan Singh of village Madanapur on mortgage and on that land, he was in possession. He has further stated that the incident was about one and half year before. The time was about 12 'o' clock in the daylight. In the half portion of the field, he had sowed the Maize crop and the second half portion of the field was vacant. He was preparing that field for sowing the paddy crop and Kehar Singh was also with him. Then Dewan Singh, Ratan Singh, Balbir Singh and Kashmir Singh had reached there. Dewan Singh had a pistol (Tamancha) in his hand; Ratan Singh had a sword in his hand; Balbir Singh had a lathi in his hand and Kashmir Singh had a Farsa. They asked him, how they dared to come in the field. He has stated that the field was their own filed and he had taken that field as a

mortgaged land. On that, the appellants had started to destroy the Maize crop. He asked them not to do so. At this, they had started to beat him. After that Dewan Singh had fired by pistol (Tamancha) which caused the injury to Kehar Singh. On hearing the noise, Dalip Singh had also arrived on the spot. After seeing them in an injured position, Dalip Singh had used lathi. Then the appellants have run away from the place of occurrence. Then he and Kehar Singh were medically examined. This witness was cross-examined at length but nothing has come out from his statement, which may create any doubt in his statement. The statement of this witness is trustworthy, reliable and believable.

13. PW.4 is Kehar Singh, who is also an injured witness. He has stated that Inder Singh is his uncle (Tauo). On the day of the incident, he was living along with Inder Singh. Appellants Ratan Singh, Balbir Singh, Kashmir Singh and Dewan Singh were known to him. About one and a half years before, in the daylight at 12 noon he was in the field along with Inder Singh. He was ploughing the land where all the four appellants had come. Dewan Singh was armed with pistol (Tamancha); Ratan Singh was armed with sword; and rest of the two appellants had lathis in their hands. They told that Maize crop belongs to them and how he dared to enter in the field and then they started to damage the Mazie crop. When he asked them not to do so, Kashmir Singh had caused an injury to Inder Singh by lathi and then he ran away. In the mean time, Dewan Singh had fired on him which caused the injury in his thigh due to which he fell down. After receiving the injuries, he was medically examined in the Hospital by the Doctor. This witness was also cross-examined at length but nothing has come in his statement, which will create any doubt in

his statement. This witness is trustworthy, reliable and believable.

14. PW.5 is the Constable Mohan Lal, who has stated in his statement that on 30.07.1982, he was posted in Police Chowki, Dineshpur, Police Station Rudrapur, as Clerk Constable. The complainant Dalip Singh had come in the Police Station with the F.I.R. Ex.Ka.5. On the basis of this F.I.R., he had prepared the chick F.I.R. i.e. Ex.Ka.6. On the basis of this chick F.I.R., he had made the entry in G.D. report no.8 at 13.15 P.M. The copy of G.D. was prepared in the same process, that is Ex.Ka.7. In the cross-examination, he has stated that on 31.07.1982, Head Constable, Rajmal Singh had gone to Police Station, Rudrapur along with the chick F.I.R. and G.D. report no.8 to take the Crime number on this chick, the Crime No.238A was written. He has further stated that on 30.07.1982, the F.I.R. was lodged by the appellant Dewan Singh. On the basis of this, he has prepared the chick F.I.R., the copy of which he has filed that is Ex.Kha.5 and he has stated that the original is Session Trial No. 86/83. On the basis of this chick F.I.R., the entry was made in the G.D., the copy of which he had filed, i.e. Ex.Kha.6.

15. PW.6 is Noniram, who has stated in his statement that on 31.07.1982, he was posted as Head Moharrir in Police Station, Rudrapur. ON that day, Head Constable, Rajmal Singh had come at about 10.10. A.M. from the outpost Dineshpur. He had come with the chick no. 21 along with report no.8 dated 30.07.1982, which he had filed in the Police Station. ON the basis of the above said documents, he had registered the case in the G.D. which was in his own handwriting, the copy of which he has filed is Ex.Ka.8.

16. PW.7 is Guru Awtar Singh, who was declared hostile by the prosecution, as he has not supported the prosecution case.

17. PW.8 is S.I. Prem Singh, who is the Investigation Officer. He has stated that from 30.07.1982 to 7.11.1982, he was posted as Sub-Inspector in P.S., Rudrapur. The reporting Police Chowki, Dineshpur was also come under Police Station, Rudrapur and he was the in-charge of the Police Chowki. The case was registered in his presence in Police Chowi, Dineshpur on 30.07.1982 and the investigation of the case was entrusted to him. Then he had started the investigation of the case. On 30.07.1982, he had taken the bloodstained underwear of injured Kehar Singh in his possession and had prepared a Fard, that Fard is Ex.Ka.9. He has also inspected the place of occurrence and prepared the map, that is Ex.Ka. 10. He has taken the blood stained earth and plain earth from the spot and the same were sealed in separate boxes before the witnesses and he prepared a Fard, that is Ex.Ka.11. He has recorded the statements of the witnesses and the injured and on 15.09.1982, he had filed the charge sheet against the appellants Dewan Singh, Ratan Singh Kashmir Singh, that is Ex.Ka.12 and on 7.11.1982, he has filed charge sheet against appellant Balbir Singh, that is Ex.Ka. 13.

18. After that the statements of the appellants were recorded under Section 313 Cr.P.C. They have denied the allegations made against them. They had stated that they had not mortgaged the land to the complainant party. Appellant Dewan Singh has stated that there was a dispute between him and Inder Singh before the incident and on account of previous enmity due to criminal litigation u/s 107/117 Cr.P.C., he had been falsely implicated. He has also stated that in order to grab the land, a false case was fabricated against him. Appellant Ratan Singh had stated

that Dewan Singh is his father in law and due to this enmity he has been falsely implicated. Appellant Kashmir Singh has stated that Dewarn Singh is his uncle (Fufa) and that is why he has been falsely implicated. Appellant Balbir Singh has stated that due to enmity, he has been falsely implicated. However, in defence, the appellants had not produced any witness.

19. The learned counsel for the appellants has argued that that on the basis of injury report and on the basis of the evidence of the injured persons, no case under Section 307 I.P.C. is made out against the appellants.

20. As per the evidence discussed above, it is clear that PW.2 Dalip Singh has lodged the F.I.R. and P.W.3 Inder Singh and P.W.4 Kehar Singh are the injured witnesses. P.W.2 Dalip Singh has stated that on the date of occurrence i.e. 30.7.1982 at 12:00 o'clock in the noon, his father Inder Singh and his cousin brother Kehar Singh were ploughing the land for sowing the paddy crop. This land was situated in the village Madanapur and was mortgaged by appellant Dewan Singh in favour of the Inder Singh for Rs.4000/-. On the date of incident i.e. 30.7.1982, Kashmir Singh and rest of the three appellants namely Dewan Singh, Ratan Singh and Balbir Singh along with Sitabai had come on the spot. Dewan Singh was armed with pistol (Tamancha) and Ratan Singh was armed with sword and rest of the two appellants had lathis in their hands. They asked the complainant how they had reached in the field. After that, they have started to beat Inder Singh and Kehar Singh. Kehar Singh asked not to beat them and then Dewan Singh had fired by pistol (Tamancha) which hit the Kehar Singh on his thigh. Kehar Singh fell down. Thereafter, they made a noise and after hearing the cries, the people of the village had also reached there. Then the appellants had run away from the spot. The report of the

said incident was lodged in Police Chowki, Dineshpur by him. Then, Inder Singh and Kehar Singh were medically examined. He had further stated that when the appellant had beaten his father Inder Singh and Kehar Singh then, in defece he had used lathi. P.W.3 Inder Singh, who is an injured witness, has stated that he had taken the land of Dewan Singh of village Madanpur on mortgage and on that land, he was in possession. He has stated that on the date of the incident i.e. on 30.7.1982, appellants Dewan Singh, Ratan Singh, Balbir Singh and Kashmir Singh had reached there. Dewan Singh had a pistol (Tamancha) in his hand; Ratan Singh had a sword in his hand and Balbir Singh had a lathi in his hand. They asked him, how they dared to come in the field. Then he has stated that the field was their own filed and he had taken that field as a mortgaged land. On that, the appellants had started to destroy the Maize crop standing on the field. He asked them not to do so. At this, they had started to beat him. After that Dewan Singh had fired by pistol (Tamancha) which caused the injury to Kehar Singh. On hearing the noise, Dalip Singh had also arrived on the spot. After seeing them in an injured position, Dalip Singh had used lathi. Then the appellants have run away from the place of occurrence. Then he and Kehar Singh were medically examined. P.W.4 Kehar Singh has stated that on the day of the incident, he was living along with Inder Singh. On the date of the incident at 12:00 noon, he was in the field along with Inder Singh. He was ploughing the land where all the four appellants had come. Dewan Singh was armed with pistol (Tamancha); Ratan Singh was armed with sword and rest of the two appellants had lathis in their hands. They started to damage the Maize crop and when he asked them not to do so, Kashmir Singh had caused an injury to Inder Singh by lathi and then he ran away. In the mean time, Dewan Singh had fired on him which caused the injury in his thigh

due to which he fell down. After receiving the injuries, he was medically examined in the Hospital by the doctor.

21. The injuries on the body of Inder Singh and Kehar Singh were examined by Dr.O.S. Sharma, P.W.1 who has prepared the injury reports Ex.Ka-1 of Inder Singh and Ex.Ka-2 of Kehar Singh. He also prepared the supplementary reports of Inder Singh Ex.Ka-3 and of Kehar Singh Ex.Ka-4. In the supplementary report of Inder Singh, he has opined that the Injury No.2 of Inder Singh was grievous and injury No.1 was simple in nature. On the basis of supplementary medical report of Kehar Singh Ex.Ka-4, he has opined that the injuries were caused by firearm. He has also stated that the injuries of both the injured persons could possibly be caused on 30.7.1982 in the noon at 12:00 P.M. Thus, the statement of P.W.2 Dalip Singh, P.W.3 Inder Singh and P.W.4 Kehar Singh is corroborated by the statements of P.W.1 Dr. O.S. Sharma.

22. Thus, from the evidence discussed above, it is proved by the prosecution that on 30.7.1982 at 12:00 o'clock in the noon at village Madnapur, outpost Dineshpur, P.S. Rudrapur, when the Inder Singh and Kehar Singh were ploughing the land for sowing the paddy crop which was mortgaged by appellant Dewan Singh in favour of the Inder Singh for Rs.4,000/- and he was in possession before the incident, then the appellants Dewan Singh, Ratan Singh, Kashmir Singh and Balbir Singh had reached there with the common object and common intention and with pre-planning of mind to take the possession over the land forcibly and in this way, they caused the injuries to Kehar Singh and Inder Singh. Appellant Dewan Singh had caused the injury to Kehar Singh by pistol (Tamancha) and the appellants Kashmir Singh and Balbir Singh had caused the injury to the Inder Singh by Lathis. In this way, it is clear that the appellants

Dewan Singh, Balbir Singh, Kashmir Singh and Ratan Singh, with the common intention, common knowledge and pre-planning of mind, had tried to kill Inder Singh and Kehar Singh to take the possession over the said land which was mortgaged by Dewan Singh in favour of the Inder Singh for Rs.4,000/-. There is an injury of Lathi on the person of Inder Singh and there is also an injury of firearm on the person of Kehar Singh. Thus, it is well established that the prosecution has proved its case against the appellants beyond reasonable doubt that the appellant Dewan Singh is guilty of the offence punishable u/s 307 IPC and 323 r/w 34 IPC and rest of the appellants namely Ratan Singh, Kashmir Singh and Balbir Singh are guilty of the offence punishable u/s 307/34 IPC and 323/34 IPC.

23. The learned counsel for the appellants has further argued that a cross case was registered against the complainant party. Dewan Singh appellant has also registered a F.I.R. in Case Crime No. 238/82 and the complainant party has also faced the trial under Section 147, 148, 307, 307/149 and 323/149 I.P.C.

24. The learned counsel for the appellants has argued that the appellants' party was not aggressors and the complainant party was the aggressor. Sri Jitendra Chaudhary, learned counsel for the appellants No.1 and 4 has filed a certified copy of the judgment and order dated 21.06.1985 in Session Trial No.86 of 1983 passed by Additional Sessions Judge, (Special Judge, Nainital) in S.T. NO.86 of 1983. In the said judgment, learned Additional Sessions Judge, Nainital has held that Dewan Singh and others were the aggressors and the accused in that case had caused the injuries to them in exercise of their right of private defence on their person and property. Thus, the learned Additional Sessions Judge, Nainital has acquitted Variyam Singh in that case under Sections 147, 307/149,

323/149 I.P.C. and accused Inder Singh, Dalip Singh and Kehar Singh were also acquitted for the charge under Sections 148, 307 and 323/149 I.P.C. Against this order dated 21.06.1985 passed by Additional Sessions Judge, (Special Judge, Nainital) in Session Trial No. 86/83, neither the State has filed any appeal nor the complainant has filed any revision. For this reason, this judgment and order dated 21.6.1985 in Session Trial No.86 of 1983 passed by Additional Sessions Judge, (Special Judge, Nainital) has become final. Even otherwise, on the basis of the evidence discussed above, the appellants are the aggressor party and not the complainant party. Thus, this argument advanced by learned counsel for the appellants has got no force for the above said reasons.

25. For the reasons recorded above, the judgment and order passed by Additional Sessions Judge (Special Judge, Nainital) dated 21.06.1985 in Session Trial No.70 of 1983 is hereby confirmed. The conviction and sentence of the appellant Dewan Singh for four years R.I. under Section 307 and fine of Rs.2,000/- and also to undergo R.I. for one year and fine of Rs.500/- under Section 323/34 I.P.C. and in default of fine to undergo R.I. for six months and three months respectively, is hereby confirmed. The conviction and sentence of the appellants Ratan Singh, Kashmir Singh & Balbir Singh for four years R.I. and fine of Rs.2,000/- under section 307/34 I.P.C. and also to undergo R.I. for one years and fine of Rs.500/- under Section 323/34 I.P.C. and in default of fine to undergo R.I. for six months and three months respectively, is also hereby confirmed. The substantive sentences, as directed, shall run concurrently.

26. In view of the above, the appeal is devoid of merit and is hereby dismissed.

**(Dharam Veer, J.)**

**June 08, 2007**
Rajeev Dang